

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	(DA 04-1445)
)	
Manchester-Nashua Cellular Telephone, L.P.)	
NH #1 Rural Cellular, Inc.)	
USCOC of New Hampshire RSA #2, Inc.)	
)	
For Designation as an Eligible)	
Telecommunications Carrier)	
In the State of New Hampshire)	

COMMENTS OF NEW HAMPSHIRE RURAL CARRIER GROUP

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Summary

This matter involves the petition of Manchester-Nashua Cellular Telephone, L.P., NH #1 Rural Cellular, Inc., and USCOC of New Hampshire RSA #2, Inc. (collectively “U.S. Cellular”) for designation as an eligible telecommunications carrier (“ETC”) in the New Hampshire Independents’ service areas. The New Hampshire Independents respectfully urge the Commission to deny U.S. Cellular’s Petition in light of the Commission’s recently issued Notice of Proposed Rulemaking concerning the Federal-State Joint Board on Universal Service Recommended Decision. Granting designation prior to the Commission finalizing these potentially new standards will not serve the public interest.

In addition, U.S. Cellular has failed to provide evidence in its petition that permits the Commission to conduct a fact-specific public interest examination. U.S. Cellular has the burden to provide this in its Petition and has elected not to provide detailed information regarding its universal service offering. Such detail is essential to determine whether universal service is affordable and consistent with Commission rules and policies regarding universal service.

For these reasons, the New Hampshire Independents urge the Commission to deny U.S. Cellular’s Petition. Absent denying the Petition, the New Hampshire Independents recommend that the Commission delay action on U.S. Cellular’s Petition until it issues its order on the Recommended Decision

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COMMENTS OF NEW HAMPSHIRE RURAL CARRIER GROUP

In response to the Federal Communications Commission (“FCC” or “Commission”) Public Notice in the above captioned matter, the local exchange companies of Bretton Woods Telephone Company, Dixville Telephone Company, Dunbarton Telephone Company, Granite State Telephone, Inc., Kearsarge Telephone Company, Northland Telephone Co. of New Hampshire, Hollis Telephone Company, Merrimack County Telephone Company, and Wilton Telephone Company (collectively the “New Hampshire Independents” or the “New Hampshire Rural Carrier Group”) through their consultant submit these comments.¹ This matter involves the petition of Manchester-Nashua Cellular Telephone, L.P., NH #1 Rural Cellular, Inc., and USCOC of New Hampshire RSA #2, Inc. (collectively “U.S. Cellular”) for designation as an eligible telecommunications carrier (“ETC”) in the New Hampshire Independents’ service areas

¹ Federal Communications Commission, Public Notice: Parties are Invited to Comment on Petitions for Eligible Telecommunications Carrier Designations, DA 04-1445, CC Docket No. 96-45, May 21, 2004.

located in the state of New Hampshire.² The New Hampshire Independents respectfully urge the Commission to deny U.S. Cellular's Petition in light of the Commission's recently issued Notice of Proposed Rulemaking concerning the Federal-State Joint Board on Universal Service Recommended Decision.³ Due to the issuance of the Notice of Proposed Rulemaking, the Commission has notified all interested parties in this matter that changes to the Commission rules concerning ETC designation and the scope of federal universal service support are likely to occur. Granting designation prior to the Commission finalizing these potentially new standards will not serve the public interest.

In addition, U.S. Cellular has failed to provide evidence in its Petition that permits the Commission to conduct a fact-specific public interest examination. U.S. Cellular has the burden to provide this in its Petition and has elected not to provide detailed information regarding its universal service offering. Such detail is essential to determine whether universal service is affordable and consistent with Commission rules and policies regarding universal service. Moreover, the ramifications of the Commission's proposed rulemaking conjoined with granting the U.S. Cellular Petition may result in a significant harm to the respective abilities of the New Hampshire Independents to provide universal service. These considerations were not addressed by U.S. Cellular in its Petition.

For the following reasons, the New Hampshire Independents urge the Commission to deny U.S. Cellular's Petition.

² Manchester-Nashua Cellular Telephone, L.P., NH #1 Rural Cellular, Inc., and USCOC of New Hampshire RSA #2, Inc., *In the Matter of Federal-State Joint Board on Universal Service*, Petition for Designation as an Eligible Telecommunications Carrier in the State of New Hampshire, CC Docket No. 96-45, May 12, 2004. ("Petition")

³ *In the Matter of Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 04-127, Rel. June 8, 2004. ("Recommended Decision" or "Notice of Proposed Rulemaking").

1. The Commission should deny or table U.S. Cellular's Petition in light of its release of a Notice of Proposed Rulemaking on ETC designations and Universal Service Support distribution.

On June 8, 2004 the Commission released its Notice of Proposed Rulemaking. In its Recommended Decision, the Federal-State Joint Board on Universal Service recommended several items that if accepted will modify the ETC designation process at the Commission and change the method of federal universal service support distribution. In sum, these recommendations now before the Commission may significantly alter the ETC landscape. The New Hampshire Independents respectfully recommend that the Commission defer any decision in the instant proceeding until the Commission issues its order on the Recommended Decision. This will allow the Commission to consider the ramifications of U.S. Cellular's Petition in the context of forthcoming rule changes.

The New Hampshire Independents have cause to be concerned that granting U.S. Cellular's Petition prematurely will create a situation where U.S. Cellular may claim to be grandfathered under the old ETC designation provisions. In another matter before this Commission, RCC, another ETC Petitioner argues "procedural due process protects CETC *designations* from the retroactive application of new CETC designation *requirements*."⁴ Thus, any new requirements raised by the Joint Board and adopted by this Commission may be subject to a due process challenge. To avoid any possible travesty of public interest in this matter,

⁴ *In the Matter of RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, Reply Comments of RCC Holdings, Inc., CC Docket No. 96-45, June 9, 2004 at 16 (Emphasis in original).

prudence dictates that the Commission should defer its deliberations on U.S. Cellular's Petition until it completes its current rulemaking modifications.

It is undeniable that the Joint Board's Recommended Decision has significant and far-reaching implications regarding the designation of ETCs by the Commission and the distribution and capping of federal universal service support. To grant U.S. Cellular's petition prior to a forthcoming order on matters for which parties have been notified through the Notice of Proposed Rulemaking may affect the respective abilities of the New Hampshire Independents to continue to provide universal service at affordable rates.⁵

2. The Commission should deny U.S. Cellular's Petition because U.S. Cellular has failed to provide evidence in its petition that permits the Commission to conduct a fact-specific public interest examination.

Throughout U.S. Cellular's discussion of the public interest lie several unsupported factual statements and apparent inaccuracies. For instance, U.S. Cellular claims that ETC designation will "facilitate the provision of advanced communications services to the residents of rural New Hampshire."⁶ U.S. Cellular alleges that residents of rural telephone service areas have "long trailed urban areas" in receiving advanced telecommunications services.⁷ U.S. Cellular provides no facts supporting this assertion. However, several industry reports show exactly the

⁵ One example of this effect is the cap of federal universal service support on a primary line basis when a CETC is designated. In addition to its primary line recommendation, the Joint Board also recommends "high-cost support in areas served by rural carriers be capped on a per-primary line basis when a competitive ETC is present or when a competitive ETC enters the market and be adjusted annually by an index factor." *See* Recommended Decision at 108. This recommendation would decouple the New Hampshire Independents' federal support from actual expenditures for universal service. This prospect would affect the New Hampshire Independents' ability to commit to continued infrastructure investment under current arrangements.

⁶ Petition at ¶ 28.

⁷ *Id.*

opposite conclusion – rural independent customers receive advanced telecommunications services and innovative services at timelines that far exceed urban areas.⁸

U.S. Cellular claims service quality and customer service could improve if it is designated as an ETC in New Hampshire.⁹ Here again, U.S. Cellular provides no facts supporting its allegation that service quality of the New Hampshire Independents is degraded in any way with respect to the reliability standards that are wireline industry norms.

In another matter, U.S. Cellular states upon designation as an ETC, it will make available to consumers a universal service offering over its cellular network infrastructure, using the same antenna, cell-site, tower, trunking, mobile switching, and interconnection facilities used by the company to serve its existing conventional mobile cellular service customers. As required by law, U.S. Cellular will provide service to any customer requesting service within the designated ETC service area upon reasonable request.¹⁰

U.S. Cellular chose not to provide this Commission with any information regarding its “universal service offering,” thus the Commission cannot determine with any particularity whether U.S. Cellular’s designation is consistent with Congressional principles which require that quality services should be available at “affordable rates.”¹¹

Moreover, U.S. Cellular did not provide any information on whether this universal service offering will require additional customer premises equipment that customers would need to purchase in addition to a basic monthly service charge.

U.S. Cellular speaks of offering service when it receives a reasonable request for service. However, it provides no details that define its understanding of a reasonable request. Without a

⁸ See *e.g.*, NTCA 2003 Broadband Survey Report, available at www.NTCA.org; OPASTCO 2004 Advanced Services Survey, May 10, 2004 Press Release available at www.OPASTCO.org.

⁹ Petition at ¶ 35.

¹⁰ Petition at ¶ 5.

clear understanding of the term “reasonable request,” the offer made by U.S. Cellular is empty and sterile. The New Hampshire Independents recommend that the Commission define what it requires for reasonable request offerings.

U.S. Cellular seeks to be designated an ETC in order to receive support for its service area in New Hampshire. U.S. Cellular states that it “commits to use high-cost support to improve service in areas it would not otherwise invest in. As U.S. Cellular constructs additional cell sites in high-cost areas to improve the quality of its radio frequency signal, its customers will have a greater choice among service providers and will receive more reliable service.”¹² U.S. Cellular has not demonstrated a firm, comprehensive build-out schedule for the rural service areas for which it seeks ETC designation. If U.S. Cellular believes that it can receive federal support for a specific service area in New Hampshire – one of the New Hampshire Independent’s study areas - and use this support in another service area in New Hampshire, the New Hampshire Independents are concerned that U.S. Cellular would not be proposing to use federal support in the manner in which it was intended.¹³ No ETC should be allowed to receive support for one service area and use this support in another service area. The purpose of federal support is service-area-specific. All ETCs must use federal support in the service area for which it receives the support. Otherwise, the competitive ETCs would be allowed to make a mockery of the federal and state certification process. This requirement is consistent with the process the Commission has for non-rural service areas. The Commission specifically targets wire-center service areas to receive support for services offered in those specific geographic areas.¹⁴ Any

¹¹ See 47 U.S.C. § 254(b)(1).

¹² Petition at ¶ 31.

¹³ See 47 CFR § 54.314.

¹⁴ See 47 CFR § 54.309.

build-out by U.S. Cellular, assuming *arguendo* U.S. Cellular were designated an ETC in the respective service areas of the New Hampshire Independents, should be targeted to specifically designated service areas. U.S. Cellular should not be permitted to take support from one service area and spend this support in another service area.

In light of this concern, the New Hampshire Independents note that U.S. Cellular has provided no firm build-out plan. The Petition does not meet the standard for build-out plans used by the Commission in the Virginia Cellular proceeding. The Commission stated its desire to weigh the benefit of a “competitive ETC’s ability to satisfy its obligation to serve the designated service areas within a reasonable time frame.”¹⁵ U.S. Cellular’s Petition does not commit to use any universal service funds in the New Hampshire Independents’ service areas. U.S. Cellular’s proposal is contrary to the Commission’s policy that funds be used in the service areas for which they are received. Further, U.S. Cellular’s proposal is not in the public interest. To designate a carrier in a service area that does not propose to use federal support in that service area fails the most basic aspect of public interest -- being of service to the designated public.

Upon review of U.S. Cellular’s public interest discussion, the New Hampshire Independents find no discussion of the purpose of the public interest requirement. The New Hampshire Independents believe it is important to observe that while seeking to promote competition in telecommunications services nationwide, Congress has determined that it may not be in the public interest to have more than one ETC designated in areas served by rural carriers. In order to designate a second ETC in these areas, Congress requires that an explicit determination be made by state commissions that a second ETC designation is in the public

¹⁵ *In the Matter of Federal-State Joint Board on Universal Service*, Memorandum Opinion and Order, FCC 03-338, Rel. Jan. 24, 2004 at 28. (“Virginia Cellular”).

interest.¹⁶ The proposition that competition universally benefits all customers in all areas and thus all competitors should qualify for universal service support is not supported by congressional action, nor is it recommended by the Joint Board. Congress passed several provisions in the Telecommunications Act of 1996 that identified the need to temper and in some instances forestall competition in areas served by rural carriers.¹⁷ These provisions were enacted because Congress knew that in certain instances the results of a competitive market could run contrary to the public interest. One reason why competition can be destructive rather than beneficial is due to the economic reality of large investments in plant and equipment for telecommunications service in sparsely populated areas. In these instances, the public interest has been best served by creating the largest critical mass of customers for one carrier; thereby creating the best economies of scale for rural areas. Pertaining to universal service support, Congress clearly prescribed a mechanism whereby competitive carriers must meet the public interest prior to receiving universal service support for their networks in areas served by rural telephone companies.

The U.S. Cellular Petition does not address these concerns because it does not acknowledge the public policy purposes surrounding the public interest in areas served by many New Hampshire Independents. An example of this is U.S. Cellular's discussion of the burden it will impose on the universal service fund. It states that upon designation it will receive "less than 0.04 percent of all high-cost support."¹⁸ Contrary to U.S. Cellular's depiction of the effect of its actions, the New Hampshire Independents argue this proceeding will have a considerable

¹⁶ See 47 USC § 214(e)(2).

¹⁷ See § 214(e)(2) and (e)(6), § 251(f), and § 253(f).

¹⁸ Petition at ¶ 27.

impact on federal universal service support. There is a longstanding line of economic literature that explores the concept of externalities. In this literature, economists explore the effect of small incremental actions by individuals on social outcomes. One of the more famous examples in this literature is called the “Tragedy of the Commons.”¹⁹ In this tragedy an undesirable social outcome arises because individual villagers graze their cows on a common field. Because the villagers do not consider their impact on the society as a whole, each villager allows his cows to over-graze the common field and under-graze his private property. Another example of this principle is found in a New York Times report stating that “overfishing has decimated the stocks of cod, haddock and flounder that have sustained New Englanders for centuries.”²⁰ The overfishing example highlights the problem of the tragedy of the commons: “Each fisherman has a negligible impact on the total stock of fish, but the accumulated efforts of thousands of fishermen results in serious depletion.”²¹ The determination in this proceeding will affect, for good or ill, the sustainability of the federal universal service programs at a scale far larger than what U.S. Cellular acknowledges.

In light of the lack of specific information regarding U.S. Cellular’s service plans, the incorrect facts it relies upon, and its lack of consideration of the larger impact of granting ETC designations, the New Hampshire Independents respectfully recommend that the Commission find that the public interest has not been satisfied by U.S. Cellular’s Petition.

Conclusion

¹⁹ G. Hardin, “The Tragedy of the Commons,” *Science*, 1968, pp. 1243-47.

²⁰ “Plenty of Fish in the Sea? Not Anymore,” *New York Times*, March 23, 1992, page A-15.

²¹ Hal R. Varian, *Intermediate Microeconomics, A Modern Approach*, Third Edition, Norton, 1993, page

The New Hampshire Independents have provided compelling reasons why U.S. Cellular's Petition should be denied. Absent denying the Petition, the New Hampshire Independents recommend that the Commission delay action on U.S. Cellular's Petition until it issues its order on the Recommended Decision. This current rulemaking process will directly affect the New Hampshire Independents when a second ETC has been or will be designated in their service area.

Sincerely,

/s/ Manny Staurulakis

On behalf of the New Hampshire Independents

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